FILED
NOV 8 1979
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

OCTOBER TERM, 1979

CASE NO. 79,458

BEATRICE R. DONNER,

Appellant,

vs.

PAUL B. ANTON, WILLIAM I. DONNER, RUTH JEAN DONNER, LARNA KATZ DONNER and EDWARD DAVID DONNER,

Appellees.

MOTION TO DISMISS APPEAL AND MOTION TO AFFIRM

On Appeal from the Supreme Court of Florida

AMY LINDA STEELE, ESQUIRE
801 Northeast 167th Street
Suite 304
North Miami Beach, Florida 33162

-and-

DAVID L. KLINE, ESQUIRE
Post Office Box 650
Hollywood, Florida 33022
Telephone: (305) 921-5500
Attorneys for Appellees,
PAUL B. ANTON
and WILLIAM I. DONNER,
Co-Personal Representatives

GROUNDS FOR MOTION TO DISMISS APPEAL AND TO AFFIRM DECISION OF FLORIDA SUPREME COURT

Appellees herein file this their Motion to Dismiss the Appeal of the Appellant, BEATRICE R. DONNER, and Motion to Affirm the Decision of the Florida Supreme Court on the ground that said appeal does not present a substantial federal question pursuant to Rule 16 of this Court and the judgment rests on an adequate non-federal basis. The decision of the Florida Supreme Court denying certiorari should be affirmed as same does not conflict with the Federal Constitution. *In Re Estate of Donner,* 364 So.2d 753 (Fla. 3d D.C.A. 1978); *cert. den.,* 373 So.2d 457 (Fla. 1979).

BEATRICE R. DONNER has challenged by her appeal, the constitutionality of Florida's former Dower Statute as set forth in §731.34 of the Florida Statutes (1971) and set out in Appellant's Jurisdictional Statement.

STATEMENT OF THE CASE

Appellees, PAUL B. ANTON and WILLIAM I. DONNER, as Co-Personal Representatives of the Estate of SAMUEL DONNER, object to the Statement of the Case set forth by the Appellant, BEATRICE R. DONNER, in her Jurisdictional Statement to this Court, in that same contains editorialized statements which are not in conformance with Rule 15(d) of this Court in that same are not concise statements of the case containing the facts material to the consideration of the question presented. The Appellees herein adopt the Statement of the Case as presented by Appellee, LARNA DONNER, in her Motion to Dismiss and Motion to Affirm, as well as her Appendix in its entirety.

FLORIDA'S FORMER DOWER STATUTE §731.31 OF THE FLORIDA STATUTES (1971) DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

ARGUMENT

The Appellant has cited certain decisions of this Court as the basis for sustaining jurisdiction relative to her appeal. *Royster Guano Co. v. Virginia,* 253 U.S. 412 (1920), was an appeal from a Virginia Court decision, which upheld the imposition of a state tax on income from sources and business done, as well as property owned, outside the State of Virginia, where corporations doing no business within the state were not taxed. This

Court held that the state statute imposing such a tax violated the equal protection clause of the Fourteenth Amendment since classification for purposes of legislation must be reasonable and not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. The second case was *Reed v. Reed,* 404 U.S. 71 (1971). This was a proceeding upon separate petitions by a father and mother of a decedent for administration of the decedent's estate. This Court reversed an Idaho statute which provided that as between persons equally qualified to administer estates, males must be preferred to females on the basis that the Idaho statute was grounded solely on discrimination and therefore was violative of the equal protection clause of the Fourteenth Amendment. In *Eisenstadt v. Baird,* 405 U.S. 438 (1972), this Court held that a Massachusetts statute allowing married persons to obtain contraceptives to prevent pregnancy but prohibiting distribution of contraceptives to single persons violates the equal protection clause of the Fourteenth Amendment. This Court stated that statutory classification between married and unmarried persons was arbitrary and had no substantial relation to the object of the legislation. *Orr v. Orr,* _____ U.S. _____; 59 L.Ed.2d 306 (1979), held an Alabama statute imposing alimony obligations on husbands but not wives to be violative of the equal protection clause of the Fourteenth Amendment since this was solely classification of gender. The final case relied upon the the Appellant, *Caban v. Mohammed,* _____ U.S. _____; 60 L.Ed.2d 297 (1979), is a decision of this Court holding a New York statute violative of the equal protection clause of the Fourteenth Amendment as that

statute permitted an unwed mother, but not an unwed father, to block adoption proceedings by withholding consent since that statute was discrimination as classification by gender only.

In the case at bar, the statute in question is a dower statute which the Appellant challenges based upon her argument that the dower statute arbitrarily picked LARNA DONNER, the decedent's widow, from among the "class of the decedent's wives", and favored her with the vast bulk of the decedent's estate. The Appellant contends that this is a discriminatory choice which has no relation to the object of the legislation due to the fact that widow, LARNA DONNER, was married to the decedent for only 33 days. This argument is totally without merit and is not capable of support by the holdings cited by the Appellant to sustain this Court's jurisdiction, and discussed above.

The Appellant's error can be easily seen by her statement that the dower statute arbitrarily picked LARNA DONNER from among the "class of the decedent's wives". There was only one wife at the time of the decedent's demise, and that was LARNA DONNER, the decedent's widow. There were, however, two former wives, BEATRICE and RUTH, who comprise a separate and distinct class other than widows. Each had her opportunity prior to the decedent's death to obtain sustenance for her support. The purpose of the dower statute is to provide support for the widow, who, unlike the former wives, has had no opportunity to bargain and negotiate for her support as did BEATRICE and RUTH, from such property as the husband possesses at the time he dies. *Adams v. Adams*, 2 So.2d 855 (Fla. 1941).

The dower statute in question does not choose or classify among "wives" and does treat all persons similarly circumstanced alike. Each and every surviving widow of a decedent in Florida had the same opportunity to rely on Florida's Dower Statute which was in effect when SAMUEL DONNER died. The mere fact that the Appellant is not satisfied with the amount of money she is going to receive from the Estate, does not make Florida's Dower Statute, which is being attacked by the Appellant, unconstitutional as being in violation of the equal protection clause of the Fourteenth Amendment.

CONCLUSION

For the reasons stated, the Appellees Paul B. Anton and William I. Donner respectfully contend that their Motion to Dismiss be granted and the decision of the Florida Supreme Court be affirmed.

Respectfully submitted,

AMY LINDA STEELE, ESQUIRE
801 Northeast 167th Street
Suite 304
North Miami Beach, Florida 33162
Telephone: (305) 653-2488

-and-

DAVID L. KLINE, ESQUIRE
Post Office Box 650
Hollywood, Florida 33022
Telephone: (305) 921-5500
Attorneys for Appellees,
PAUL B. ANTON
and WILLIAM I. DONNER,
Co-Personal Representatives

CERTIFICATE OF SERVICE

We, AMY LINDA STEELE and DAVID L. KLINE, attorneys for Appellees, PAUL B. ANTON and WILLIAM I. DONNER, as Co-Personal Representatives, and members of the Bar of the Supreme Court of the United States, hereby certify that on the day of November, 1979, we served copies of the foregoing Motion to Dismiss Appeal and Motion to Affirm to the Supreme Court of the United States and on the several parties thereto as follows:

On BEATRICE R. DONNER, Appellant, and LARNA DONNER, RUTH JEAN DONNER, and EDWARD DAVID DONNER, Appellees, by mailing copies in duly addressed envelopes with first class postage prepaid to their respective attorneys of record, as follows:

SINCLAIR, LOUIS, SIEGEL & HEATH
Attorneys for Beatrice R. Donner
1600 Alfred I. Dupont Building
Miami, Florida 33131

BROAD & CASSEL
Attorneys for Larna Donner
1108 Kane Concourse
Bay Harbour Islands, Florida 33154

HELLER & KAPLAN
Attorneys for Ruth J. Donner
1205 Ainsley Building
14 Northeast 1st Avenue
Miami, Florida 33132

DUBBIN, SCHIFF, BERKMAN & DUBBIN
Attorneys for Edward D. Donner
444 Brickell Avenue
1000 Rivergate Plaza
Miami, Florida 33131

AMY LINDA STEELE, ESQUIRE
801 Northeast 167th Street
Suite 304
North Miami Beach, Florida 33162
653-2488

DAVID L. KLINE, ESQUIRE
Post Office Box 650
Hollywood, Florida 33022
921-5500